IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 6788 of 2007()

CRIME NO. 1554/07 OF PERUMBAVOOR POLICE STATION

.....

PETITIONERS/ACCUSED

---

1. SUNIL KUMAR, AGED 26 YEARS,
S/O.DADANANDAN, SOUPARNIKA,
KANJIRAKKAD KARA, PERUMBAVOOR.

2. ANEESH, AGED 24 YEARS, S/O.RAVI,
MOOLEPARAMBIL HOUSE,
KANJIRAKKAD, PERUMBAVOOR.

3. SIJO, AGED 26 YEARS, S/O.GEORGE,
MAZHUVANCHERY HOUSE, PERUMBAVOOR.

BY ADV. SMT.REKHA C.NAIR

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
PERUMBAVOOR.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 6788 of 2007

- -

Dated this the 28th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 3. Altogether there are three accused persons now. They face allegations in a crime registered under Section 326 I.P.C. The defacto complainant/victim is an employee of a bar hotel. The father of one of the accused, one Sadanandan by name, had gone to the bar at 12 noon on that day. He had consumed liquor. There was some quarrel between the employees of the bar and the said Sadanandan regarding the bill that was issued. The said Sadanandan was allegedly pushed out of the bar. On that night, it is alleged that, three persons came on a motor cycle and attacked the defacto complainant, an employee of the bar, who was returning from the bar after taking his food at some other place. He was attacked with swords. He suffered a fracture of the lower limb bone. Crime has been registered. In the F.I. statement it is stated that Sadanandan and

two others had allegedly committed the offence. But in the course of investigation it was revealed that not the said Sadanandan, but the petitioner, the son of Sadanandan, and two of his friends (A1 to A3) had attacked the victim. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. The learned counsel relies on the crucial incongruent statement about the assailant - as to whether it is Sadanandan, the father of the first petitioner, or the first petitioner. He further contends that there is a counter case also. But on closer scrutiny it is found that the counter case is not the counter case of the present case. That is registered in respect of the incident in which Sadanandan was allegedly attacked at the bar earlier in the noon. The learned counsel for the petitioners submits that, at any rate, the petitioners do not deserve to suffer the trauma of arrest and incarceration. They may be granted anticipatory bail subject to appropriate conditions, prays the learned counsel.

3. The learned Prosecutor opposes the application. He submits that the earlier incident clearly shows that the motive suggested by the defacto complainant is absolutely correct. The nature of the injury suffered as also the nature of the incident must be kept in mind. On account of animosity, the three accused persons, evidently as per the prior collusion, had come to the scene of occurrence in a motor cycle. In any view of the matter, the petitioners do not deserve the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. They may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. It is unnecessary to embark on a detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that, I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must

resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

tm